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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 THOMAS WILLIAM SINCLAIR
9 RICHEY,

10 Plaintiff,

11 v.

12 DOUGLAS THAUT,

13 Defendant.

CASE NO. C11-5755BHS

ORDER DECLINING TO
ADOPT REPORT AND
RECOMMENDATION AND
GRANTING MOTION TO
DISMISS

14 This matter comes before the Court on the Report and Recommendation (“R&R”) of
15 the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 19), and Plaintiff
16 Thomas William Sinclair Richey’s (“Richey”) objections to the R&R (Dkt. 21).

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18 On February 16, 2012, Judge Strombom issued the R&R recommending that the
19 Court dismiss Richey’s complaint for failure to exhaust his administrative remedies. Dkt.
20 19. Judge Strombom also recommended that the dismissal count as a “strike” against
21 Richey because he attempted to exhaust his administrative remedies shortly after filing the
22 lawsuit. *Id.* On March 1, 2012, Richey objected to both recommendations. Dkt. 21. First,
23 Richey argues that his claim is exhausted because the grievance coordinator handled his
24 grievance in such a manner that his grievance was not appealable through the prison’s
25 grievance procedure. *Id.* Second, Richey argues that the grievance manager rewrote and
26 appealed Richey’s grievance after Richey had filed this lawsuit.
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1 Upon review of the record the Court agrees with Richey because (1) his grievance
2 was “withdrawn” instead of denied, which makes the grievance not subject to appeal and (2)
3 the subsequent grievance was typed, not handwritten, and only contains the grievance
4 manager’s signature. Therefore, the Court declines to adopt the R&R.

5 However, in the Defendant Douglas Thaut’s reply brief, Thaut argues that Richey’s
6 claim can be dismissed because Washington provides an adequate post deprivation remedy.
7 The random and unauthorized deprivation of a prisoner’s property by a state official or
8 employee does not state a claim for a violation of due process in a § 1983 action where the
9 state provides an adequate post-deprivation remedy for the loss. *Hudson v. Palmer*, 468
10 U.S. 517 (1984) (unauthorized, intentional loss of property or injury to property by state
11 official does not violate due process so long as the state provides a meaningful
12 post-deprivation remedy for the loss or injury); *Parratt v. Taylor*, 451 U.S. 527 (1981)
13 (negligent loss of property or injury to property by state official does not violate due process
14 so long as the state provides a meaningful post-deprivation remedy for the loss or injury).
15

16 In Washington, a plaintiff may file a tort claim and a civil action against the state of
17 Washington for the unlawful loss or destruction of personal property. RCW 72.02.045 (state
18 and/or state officials liable for the negligent or intentional loss of inmate property); RCW
19 4.92.090-.100 (state liable for the tortious conduct of state officials and employees); *see also*
20 *Jeffries v. Reed*, 631 F. Supp. 1212, 1216 (E.D. Wa. 1986) (state of Washington provides a
21 meaningful remedy for the loss of an inmate’s property by state officials).
22

23 In this case, Richey may file a tort claim for the temporary deprivation of money
24 from his prison account in Washington state court. This is an adequate post-deprivation
25 remedy. Therefore, the Court grants Thaut’s motion to dismiss on this basis.

26 Therefore, it is hereby **ORDERED** that
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- 2 (1) The Court declines to adopt the R&R (Dkt. 19);
- 3 (2) Thaut's motion to dismiss (Dkt. 14) is **GRANTED** as stated herein;
- 4 (3) Richey's complaint is **DISMISSED**; and
- 5 (4) This case shall be **CLOSED**.

6 DATED this 28th day of March 2012.

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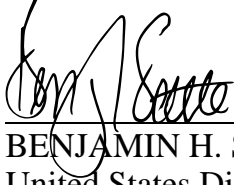
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BENJAMIN H. SETTLE
United States District Judge